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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2270/93

New Delhi, this day 25th February, 1994.

HON'BLE SHRI P.T. THIRUVENGADAM, MEMBER (A)

Shri Mukesh Kumar Bagga,  
s/o Shri Sawan Kumar,  
Parcel Porter,  
Northern Railway,  
Railway Station, New Delhi.  
(By Shri B.S. Mainoo, Advocate)

..Applicant

Vs.

Union of India: through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

2. The Divisional Railway Manager,  
Northern Railway,  
State Entry Road,  
New Delhi.

Respondents

(By Shri HK Gangwani, Advocate)

ORDER

(Delivered by Hon'ble Shri P.T. Thiruvengadam, Member (A)).

The applicant is a Parcel Porter, Northern Railway in Delhi Division. He has been transferred from New Delhi to Kurukshetra vide D.R.M's letter No. 941.E/277/XI/P.II dated 21-4-93. This O.A. has been filed assailing this transfer order. The 1d. counsll for the applicant advanced a number of grounds, the main grounds being as under:-

(i) The applicant had appeared in a written test for the post of Ticket Collector and it has been alleged that he was found using unfair means in the written test. The Additional Divisional Railway Manager had passed an internal order dated 20-4-93 listing out 11 employees including the applicant and suggesting strictest punishment to set an example for future selections on the division since these 11 employees were found using unfair means in the

written test held on 28-11-92. The impugned transfer orders dated 21-4-93 have been issued as a sequel to the orders of Additional Divisional Railway Manager.

(ii) Even though 11 employees were alleged to have been employing unfair means, only the applicant and two others were singled out for transfer ~~out~~ from their place of posting. This is highly arbitrary and not bonafide.

(iii) The impugned orders have not been passed in exigency of service or public interest but as a matter of punishment and that too without establishing the unfair means, as alleged.

(iv) The family circumstances of the applicant are pitiable in that he has to support his widow mother dependent on him and four dependent unmarried sisters residing with him. His mother is a heart patient and one of the four sisters is a T.B. patient undergoing treatment in Central Hospital, New Delhi while the other three sisters are studying in Delhi.

(v) The applicant is neither the juniormost nor the seniormost person at New Delhi station to be transferred.

(vi) The transfer order carries with it ~~the stigma~~ <sup>deserves</sup> and therefore it ~~is likely~~ to be quashed.

(vii) The transfer has been effected due to pressure from staff union.

The learned counsel for the applicant laid down a number of citations to the effect that transfer cannot be ordered for any exterior reasons and should not be in ~~the~~ nature of punitive transfer nor it should be a substitute for a disciplinary action.

2. The contention of the respondents is that the transfer had been ordered purely in administrative interest and there are no malafides. The 1st. counsel

for the respondents vigorously argued that there is no link between the unfair means adopted in the written test and the impugned transfer order. The transfer orders are not punitive in nature and an inquiry would be held against the applicant and disciplinary proceedings would be initiated against him in accordance with rules to establish the misconduct relating to the said examination. As regards the contention that none other than the applicant out of 11 employees using unfair means in the written test, had been transferred out of New Delhi, the actual position is that two more employees apart from the applicant were also transferred <sup>in</sup> ~~with~~ the same transfer order. Out of this, one of them has already reported to Ghaziabad, the place to which he was transferred. The other employee was initially transferred to Modi Nagar but since there was no vacancy there, this transfer was changed to Delhi Station. Reliance was placed on Supreme Court orders in Union of India Vs. S.L.Abbas (1993 (3)SSC 678) as per which the Tribunals are not expected to go into transfer issues unless malafides are established or when the transfer is made in violation of the statutory provisions. I find the applicant has been transferred by an order dated 21-4-93 which order states that the transfer is on administrative ground. However, in the O.A. a copy of the internal noting dated 20-4-93 conveying the orders of Additional Divisional Railway Manager for imposition of strict punishment to 11 employees including the applicant for setting an example for future selections on the division has been annexed. In addition, a copy of the letter from Divisional Railway Manager addressed to the General Manager, Northern Railway (No.729-E/7/6700/DUP/P-2 dated

10-6-93) is also annexed to this O.A. The first paragraph of this letter reads as under:-

"Sub:- Cancellation of transfer of Shri Mukesh Kumar Bagga, Parcel Porter, NOLS to KKDE.

The above named employee has been transferred from New Delhi to KKDE in the administrative interest on administrative grounds as he was found doing unfair means in the selection of Ticket Collectors."

From the timing of the transfer order as well as the Divisional Railway Manager's letter dated 10-6-93, it is difficult not to link the transfer with the alleged unfair means adopted at this selection. The respondents could not produce any evidence to show that the transfer had been ordered for reasons other than the one mentioned in the letter of 10-6-93. No specific policy of transfer which was being followed in this case was also quoted. Even with regard to statement made by the applicant that he was neither the juniormost nor the seniormost person at the New Delhi Station to be transferred, the only remarks given in the reply of affidavit are "Contents of this paragraph are not admitted save as it appears from record."

4. It is not any dispute that 11 employees are alleged to be involved in employing unfair means in the written test held on 28-11-92, out of However, of the 11 employees only 3 were chosen for being issued with transfer orders. Even among these 3 excepting for the applicant, the other two have been transferred only to Ghaziabad and Delhi Stations from New Delhi station whereas the applicant has been transferred to Kurukshetra.

5. It is also not disputed that the alleged misconduct of the applicant is yet to be established.

(14)

6. In the facts and circumstances of the case, the issue of transfer order to the applicant from New Delhi to Kurukshetra lacks bonafide. Accordingly, the O.A. is allowed and the impugned transfer order dated 21-4-93 transferring the applicant from New Delhi to Kurukshetra is quashed.

7. O.A. is disposed of accordingly. No costs.

P.J. 262

(P.T.THIRUVENGADAM)  
Member (A)